

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**PATRICIA ANN KIRCHNER,**

**Plaintiff,**

**v.**

**No. 12-cv-0640 SMV**

**CAROLYN COLVIN,<sup>1</sup>  
Acting Comm'r of SSA,**

**Defendant.**

**ORDER GRANTING PLAINTIFF'S MOTION  
FOR ATTORNEY FEES UNDER EAJA**

THIS MATTER is before the Court on Plaintiff's Motion for Attorney Fees Under Equal Access to Justice Act [Doc. 25], filed on September 30, 2013. Plaintiff requests attorney fees in the amount of \$3,022.90. In her response [Doc. 26], the Commissioner does not object to Plaintiff's request for attorney's fees. The Court, having considered the submissions of counsel, the record in this case, and the relevant law, and being otherwise fully advised in the premises, **FINDS** that the motion is well-taken and will be **GRANTED**.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that Plaintiff's Motion for Attorney Fees Under Equal Access to Justice Act [Doc. 25] is **GRANTED**, and Plaintiff Patricia Ann Kirchner is authorized to receive \$3,022.90 for payment to her attorney for services before this Court, as permitted by the Equal Access to Justice Act, 28 U.S.C. § 2412, and in accordance with *Manning v. Astrue*, 510 F.3d 1246, 1255 (10th Cir. 2007).

---

<sup>1</sup> On February 14, 2013, Carolyn Colvin became the Acting Commissioner of Social Security and will, therefore, be substituted for Commissioner Michael J. Astrue as Defendant in this action. *See* Fed. R. Civ. P. 25(d)(1) (permitting such substitutions).

**IT IS FURTHER ORDERED** that if Plaintiff's counsel is ultimately granted attorney fees pursuant to 42 U.S.C. § 406(b) of the Social Security Act, counsel shall refund the smaller award to Plaintiff pursuant to *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) ("Congress harmonized fees payable by the Government under EAJA with fees payable under § 406(b) out of the claimant's past-due Social Security benefits in this manner: Fee awards may be made under both prescriptions, but the claimant's attorney must refun[d] to the claimant the amount of the smaller fee.") (internal quotation marks omitted).

**IT IS SO ORDERED.**



---

**STEPHAN M. VIDMAR**  
**United States Magistrate Judge**  
**Presiding by Consent**